

ORIGINAL

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ----- x

4 PHAT FASHIONS, LLC,

5

6 Plaintiff,

7 -against-

8 TORNADO IMPORTS (CANADA), INC.,

9

Defendants.

10

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11

12 DEPOSITION of the Plaintiff, PHAT FASHIONS,
13 LLC, by BERNT ULLMANN, taken by the Defendant
14 pursuant to Notice, held at the offices of Gibson
15 Dunn & Crutcher, 202 Park Avenue, New York, New
16 York 10166, on November 1, 2007, at 9:23 a.m.,
17 before a Notary Public of the State of New York.

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BARRISTER REPORTING SERVICE, INC.

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-and-
LAURA M. LEITNER, ESQ.

xxxxxx

1 B. Ullmann

2 agreement with Tornado.

3 I knew it was set to expire at the
4 end of December 2007. I also knew that we
5 had had -- or I had had a dialogue with
6 Mr. Wiseman about amending the agreement.
7 It had struck me as strange when Issie
8 originally brought the renewal
9 conversation, and I'm saying renewal
10 conversation because that's how it was
11 framed to me by Issie.

12 I didn't quite understand the
13 timeliness and quite frankly -- and maybe
14 I should have been more diligent at the
15 time, but I simply engaged in what I felt
16 was prudent dialogue with Mr. Wiseman to
17 advance our conversation without
18 necessarily taking complete ownership of
19 the circumstances at the time.

20 In the fall of '06, I was trying to
21 understand better what the dialogue was
22 and it struck me as being odd that,
23 clearly, if this was a renewal attempt, we
24 typically have renewal windows in which an
25 agreement is reviewed and clearly,

1 B. Ullmann

2 Mr. Wiseman was operating outside of these
3 windows and I didn't understand why. And
4 I know that that was part of the questions
5 for either Nathanson or Rollins.

6 Furthermore, I did know that a
7 draft had been circulated and I had been
8 told, or was informed at the time that the
9 draft had been signed by Mr. Wiseman and
10 later by Mr. Simmons.

11 I was also, as part of the same
12 dialogue, informed that that's okay; it
13 really does not matter. Our requirement
14 is that any amendment is done in writing
15 and that it must be signed by Bob Skinner
16 and Russell Simmons and be returned to the
17 licensee in order for the amendment to
18 take effect. I was, therefore, advised
19 that I was free to conduct negotiations
20 with a potential new licensee.

21 Q. This is your summary of discussions
22 with either Nathanson or Rollins or
23 perhaps both?

24 A. Correct.

25 Q. You think these conversations were

1 B. Ullmann

2 in roughly fall of 2000 --

3 A. Fall of 2006. I can't say exactly.

4 Q. Do you recall how many of these
5 conversations there may have been?

6 A. I do not, but I think they were a
7 few, which I would say two to three
8 conversations.

9 Q. Did you find it odd that Russell
10 Simmons had executed this document?

11 A. I did.

12 Q. Did you inquire why he executed the
13 document?

14 A. I did.

15 Q. Do officers of Phat Fashions have a
16 habit of executing documents that Phat
17 Fashions does not intend to live by?

18 MR. HOFFMAN: Objection to
19 the form.

20 A. Russell Simmons' signature was
21 viewed as a formality. So while I will
22 say that it is not common that he would be
23 signing documents as well, it does not
24 speak to the intent of the corporation.

25 In my view, the binding signature was that

1 B. Ullmann

2 of Mr. Bob Skinner.

3 Q. Mr. Simmons was the CEO of Phat
4 Fashions at the time?

5 A. That was his formal title.

6 Q. The answer is yes?

7 MR. HOFFMAN: Objection. To
8 what question?

9 Q. He was not the CEO?

10 A. What is the question?

11 Q. Was he the CEO?

12 A. That was his formal title at the
13 time.

14 Q. You're hedging the answer by saying
15 "formal title."

16 Was he the CEO or was he not the
17 CEO; it's a simple question?

18 MR. HOFFMAN: No. Objection
19 to the form. Put an appropriate
20 question. There is an objection to
21 form and I'm going to state it.

22 A. His title was CEO.

23 Q. What was his position at the
24 company?

25 A. Brand visionary and founder of the

1 B. Ullmann

2 company and he had the title of CEO.

3 Q. Do you know how the agreement got
4 to Mr. Simmons for his execution?

5 A. I don't.

6 Q. Who was involved in handling the
7 Tornado relationship within Phat Fashions?

8 A. Can you clarify the question?

9 Q. If someone asked you who, at Phat
10 Fashions, dealt with Tornado in 2006, who
11 would you include on that list?

12 A. In any capacity?

13 Q. Please tell me -- sure.

14 A. I would say contractually, it would
15 be myself on the business end; it would be
16 a number of individuals. So it can be
17 someone from licensing, it could be
18 someone working in product, it could be
19 someone in marketing.

20 Q. Thank you. That's a responsive
21 answer.

22 In terms of a dialogue, as you put
23 it, with Tornado, who would have been
24 involved in the dialogue process?

25 A. Myself.

1 B. Ullmann

2 Q. Anyone else?

3 A. No.

4 Q. Who would have handled, either your
5 outside Counsel, in-house; who else would
6 have been involved with any paperwork?

7 A. Paperwork could be Eli Nathanson
8 from Pryor Cashman. I would say at the
9 time, either Don Gramke of Kellwood legal
10 and later, Luther Rollins of Kellwood
11 legal and lastly, Peter Morris, our CFE.

12 Q. Do you recall who handled the
13 document that Mr. Wiseman executed and
14 returned to Phat Fashions?

15 MR. HOFFMAN: Objection to
16 the form.

17 A. I honestly don't know.

18 Q. Your understanding is it would have
19 been, perhaps, Mr. Morris, Mr. Gramke,
20 Mr. Rollins or Mr. Nathanson?

21 MR. HOFFMAN: Objection to
22 the form.

23 A. It would have been one of those
24 three and I would say I think it's more
25 likely -- could you restate the question.

1 B. Ullmann

2 Q. Mr. Ullmann, when did you and Issie
3 Wiseman first discuss the possibility of
4 amending the licensing agreement to extend
5 it?

6 A. I cannot recall the first time; it
7 was sometime in the spring of '06 -- oh,
8 boy. Wait. Let me take that back.

9 It may have been as early as
10 towards the end of '05. I believe it came
11 up the first time at MAGIC -- at the MAGIC
12 show in February of '06. But I'm not
13 certain. This is what I think could have
14 happened.

15 Q. Can you tell me what you recall of
16 that first discussion?

17 A. Very casual, very fleeting. Just
18 Issie saying something along the lines of,
19 Hey, I'd like to renew our agreement and
20 me, just as easily and casually, saying,
21 Sure, why not. And then I believe we had
22 a brief conversation about it at the MAGIC
23 show. So I think maybe there was one
24 phone conversation prior and then a very
25 casual conversation at the show.

1 B. Ullmann

2 Q. Do you recall if Mr. Wiseman called
3 you or you called Mr. Wiseman, the
4 pre-MAGIC show conversation?

5 A. I don't recall.

6 Q. Can you tell me what you recall of
7 the discussions at the MAGIC show?

8 A. I don't recall a lot; the shows are
9 very, very hectic. There is never any
10 time to sit down and have formal
11 conversations. I do recall having said
12 something about him needing to increase
13 minimums, but I can't recall if it's a
14 free memory from the actual conversation
15 or something that has been brought up
16 later.

17 Q. When you say "later," you mean
18 perhaps in preparation for this deposition
19 or the litigation?

20 A. Prior to that, but I don't remember
21 when.

22 Q. Why did you want to raise the
23 minimums?

24 A. Well, I didn't. I was perfectly
25 happy minding my own business when Issie

1 B. Ullmann
2 brought up renewal. It was not on my mind
3 at all. As a knee-jerk reaction, I
4 said -- whatever I said; I don't know what
5 I said.

6 But it was something along the
7 lines of, If we are to even consider it,
8 you're going to need to bring up your
9 minimums.

10 Q. What was the next contact you had
11 with Issie following the MAGIC show?

12 A. I don't recall.

13 Q. You may have already spoken of
14 this: The MAGIC show occurred when in
15 2006?

16 A. February of 2006.

17 Q. Do you recall in the early part of
18 the month, the latter part of the month?

19 A. I want to say it's the latter part
20 of the month, but again --

21 MR. HOFFMAN: Before or
22 after President's Day?

23 THE WITNESS: I honestly
24 don't remember.

25 Q. Where was the MAGIC show held?

1 B. Ullmann

2 A. No.

3 Q. You were the decision maker on
4 minimums?

5 A. No, the way it would work is that I
6 would handle the dialogue. Once we had
7 reached a meeting of the minds, I would
8 then have to turn around and take, in this
9 case, the document, the numbers, whatever
10 it was and I make a presentation to Bob
11 Skinner and he was the final decision
12 maker.

13 Q. Do you recall a discussion with
14 Mr. Wiseman following receipt of what's
15 been marked as Exhibit No. 1?

16 A. I don't recall in this specific
17 conversation. If you can frame the
18 question differently, maybe.

19 Q. Do you recall generally having
20 discussions with Mr. Wiseman or anyone
21 else from Tornado about an amendment?

22 A. I don't recall having conversations
23 with anyone but Issie. I do recall having
24 some conversations with Issie; I don't
25 specifically recall the line of detail.

1 B. Ullmann

2 Q. Why don't you tell me about the
3 next conversation that you do recall and
4 tell me as much about that conversation as
5 you are able.

6 MR. HOFFMAN: I just object
7 to the form on "next" because he
8 may not remember that it's the next
9 conversation. You've asked him
10 about conversations he remembers.
11 If he could put it in a context,
12 fine.

13 A. If you can ask specific questions,
14 it would be helpful. I have no specific
15 recollection that I can sit here and
16 testify to.

17 Q. From March of 2006 on, what is the
18 next conversation that you can recall any
19 substance of with Mr. Wiseman?

20 MR. HOFFMAN: Objection to
21 the form. You can answer.

22 A. The next conversation that I can
23 recall in any great detail -- in detail,
24 is a conversation that takes place much
25 later in the fall and that -- it does not

1 B. Ullmann

2 have to do with this, but has to do with
3 our Baby Phat licensee terminating the
4 contract with a designated company that
5 Issie is affiliated with or an owner of or
6 part-owner of and thus causing them to
7 lose Baby Phat for Canada and he was
8 distraught. I do recall that. But I
9 don't recall exactly when that was.

10 I understand your line of
11 questioning was what do I recall about
12 this process and I apologize. I don't
13 recall in great detail.

14 MR. HOFFMAN: Off the
15 record.

16 (Whereupon a discussion was
17 held off the record.)

18 Q. Just so we're clear, you don't
19 recall any detail whatsoever about any
20 conversations between March of 2006 and a
21 conversation you had in fall of '06
22 regarding a Baby Phat licensee dispute
23 involving Issie?

24 I'm simply trying to get a
25 chronology, if you will.

1 B. Ullmann

2 MR. HOFFMAN: I object to
3 the form. You can answer if you
4 understand it.

5 A. I do recall having some
6 conversations, but I can't materially
7 recall any type of detail. I really
8 cannot.

9 Q. Can you generally recall any
10 detail?

11 A. No.

12 Q. Did you discuss baseball?

13 A. Probably not.

14 Q. Did you discuss the amendment?

15 A. I would say it's likely.

16 Q. What did you discuss about the
17 amendment?

18 MR. HOFFMAN: Objection to
19 the form on "amendment." It is
20 what it is.

21 A. I truly cannot recall specific
22 details. If you ask specific questions,
23 I'm happy to try, to the best of my
24 ability, to answer.

25 Q. Can you recall general details?

1 B. Ullmann

2 A. No, I don't.

3 Q. You have no recollection of
4 discussing the amendment with Mr. Wiseman?

5 MR. HOFFMAN: Objection to
6 form. He said without being
7 refreshed. If you want to show him
8 documents or ask him questions, he
9 might be able to do so.

10 A. Right --

11 MR. OFFENHARTZ: You're
12 answering for the witness and now
13 he's going to repeat your answer.

14 MR. HOFFMAN: I'm actually
15 repeating his answer that he has
16 given now on two occasions.

17 Q. Mr. Ullmann, would you please
18 answer my question.

19 A. Can you repeat the question.

20 MR. OFFENHARTZ: Read my
21 question back, please.

22 (Whereupon the record was
23 read back by the reporter.)

24 A. I have no specific recollection.

25 But it speaks to, at the time -- just to

1 B. Ullmann

2 with Mr. Wiseman after you informed him
3 there would be no amendment or that you
4 were not going to go forward with the
5 amendment that you fully executed?

6 MR. HOFFMAN: Objection to
7 the form.

8 A. Numerous, without being able to say
9 exactly how many.

10 Q. Again, numerous?

11 A. More than three or four, but
12 probably less than ten.

13 Q. I understand that you don't
14 recall -- you have no general recollection
15 of any conversations with Mr. Wiseman from
16 March of '06 through the fall when you
17 discussed with him the Baby Phat licensee
18 dispute.

19 Do you recall how many
20 conversations you had with him, if any?

21 MR. HOFFMAN: Objection to
22 the form on the prologue to that
23 question.

24 A. Can you please restate?

25 Q. Let me ask it another way: Did you

1 B. Ullmann

2 have any discussions with Mr. Wiseman from
3 March of '06 through to December of '06,
4 other than the one you described dealing
5 with the Baby Phat licensee issue?

6 A. Yes, I believe so.

7 Q. How many would you say you had?

8 A. At least a few.

9 Q. A few being three to five, four to
10 six, five to seven?

11 A. Two to four; something like that.

12 Q. Those two to four conversations are
13 the ones you have no general recollection
14 of?

15 A. Correct.

16 (Brief recess taken.)

17 Q. Mr. Ullmann, do you recall
18 Mr. Wiseman reaching out to you at any
19 time from March of 2006 through February
20 of 2007 and asking you where things were
21 regarding the amendment to the license
22 agreement?

23 A. I don't recall the exact wording.
24 I do recall having conversations. I mean,
25 I do recall him reaching out to me and

1 B. Ullmann

2 inquiring, in general, the status maybe.

3 Q. How many of those conversations do
4 you recall taking place?

5 A. I don't recall an exact number.
6 I'm thinking it's a few conversations.

7 Q. Three to five, two to four?

8 A. Two, three.

9 Q. Do you recall when these
10 conversations were?

11 A. No.

12 Q. Do you recall, generally, what was
13 discussed?

14 A. I do recall speaking to
15 Mr. Wiseman; I don't recall specifically
16 or generally.

17 Q. I'm teaching you how to be a
18 witness. This is very frustrating for me.
19 I'm sorry.

20 A. That's okay.

21 Q. You do recall, in a time period
22 from March of 2006 through February of
23 2007, that Mr. Wiseman and you spoke about
24 the status of the amendment?

25 A. I remember speaking to him.

1 B. Ullmann

2 final stage, which involved executive
3 summary initially and then, ultimately,
4 Bob Skinner's signature.

5 Q. To the best of your recollection,
6 on Saturday, April 22, 2006, did you
7 believe that the Tornado licensee
8 agreement amendment was completely done
9 and all it needed was Bob's signature?

10 MR. HOFFMAN: Objection to
11 the form.

12 A. I don't recall.

13 Q. Let me ask you this way: Had you
14 read this e-mail on April 22nd, would you
15 have thought that Mr. Morris had made a
16 mistake?

17 MR. HOFFMAN: Objection to
18 the form. Mistake about what?

19 Q. Mr. Ullmann, you can answer the
20 question.

21 MR. HOFFMAN: Objection to
22 the form.

23 A. No. No, it doesn't look like a
24 mistake.

25 Q. Do you recall any discussions with

1 B. Ullmann

2 Issie Wiseman in April or May regarding
3 the status of the licensee amendment
4 agreement?

5 MR. HOFFMAN: Objection.
6 Asked and answered.

7 MR. OFFENHARTZ: I'm seeing
8 if perhaps, as time passes --

9 MR. HOFFMAN: I know, I'm
10 putting my objection on. He can
11 answer.

12 A. No, I do recall having had
13 conversations; I cannot recall,
14 specifically or generally, what was
15 discussed.

16 Q. Was the amendment discussed in
17 April or May?

18 A. It's possible.

19 Q. Do you remember what that
20 conversation was?

21 A. I'm sorry, I don't.

22 Q. Do you recall Issie asking you
23 words to the effect of, Bernt, where are
24 we? Waiting on the signature page; what's
25 going on?